IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.362 OF 2000

IN

WRIT PETITION NO.08 OF 2000

1. The Collector of Mumbai,
(Mumbai Suburban District),
State Excise Department,
Old Custom House,
Mumbai.

2. The State of Maharashtra ...Appellants
(Original Respondents)

Vs.

Sylvia Leo Carvalho of Mumbai
Adult, Indian inhabitant,
widow of Leo J. Carvalho
Sole Proprietress of
M/s. Leo's Bar situated at
Achanak Niwas, Opp. Andheri (East),
Mumbai-400 099. ...Respondent
(Original Petitioner)

Shri K.R. Belosey, A.G.P. for the Appellants.

Mrs Veena B. Thadani for the Respondent.

CORAM : KSHITIJ R. VYAS C.J. &
ABHAY S. OKA, J.

DATE : JUNE 12, 2006.

JUDGMENT: (PER A.S.OKA, J):

1. We have heard the learned Counsel appearing for the parties. By this Appeal the Appellants- The Collector of Mumbai and the State of Maharashtra have

taken exception to the Judgment and Order dated 17th December, 1999 passed by the learned single Judge of this Court in Writ Petition No.08 of 2000 filed by the Respondent herein.

2. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, the facts giving rise to filing of the Writ Petition by the Respondent will have to be considered in brief. The Respondent's husband late Leo was running a country liquor bar in the name and style of M/s. Leo's Bar. The said Leo was holding a CL-III licence issued by the Appellant No.1 under Rule 24 of the Maharashtra Country Liquor Rules, 1973. It was a licence for running a country liquor bar. The said Leo died on 01st June, 1999 leaving behind the Respondent and her minor son as his heirs. The Respondent applied for transfer of the CL-III licence held by her husband in her name. By communication dated 17th December, 1999, the Appellants informed the Respondent that her request for transfer of licence has been allowed and for that purpose the Respondent will have to pay a privilege fee in the sum of Rs.97,000/- to the State Government.

3. By the impugned Judgment and Order passed by

the learned single Judge of this Court, the demand made by letter dated 17th December, 1999 was quashed and set aside on the ground that the demand for privilege fee for incorporating the name of the Respondent in the licence in the place of her deceased husband was unjust and illegal. The learned single Judge relied upon a decision of a Division Bench of this Court (Coram: Pendse and Dudhat, JJ) in Appeal No.198 of 1993 in the case of State of Maharashtra & Ors. Vs. Smt Pushpalata decided on 17th February, 1994. The learned single Judge referred to another decision of a single Judge of this Court (Coram: A.P.Shah, J) in Writ Petition No.2510 of 1994 in the case of Kamla M. Poojary Vs. The Collector of Bombay & Anr.

4. Shri Belose, the learned A.G.P. appearing in support of the Appeal submitted that after death of licence holder the licence comes to an end and continuation of licence in the name of legal representatives of the original licensee is not a matter of right and the licence is not inheritable. He submitted that the learned Single Judge has taken erroneous view of the matter by holding that transfer was as a matter of right. He submitted that the demand for privilege fee was legal and proper.

5. The learned Counsel appearing for the Respondent submitted that the correctness of the impugned Judgment and Order has been specifically affirmed in a decision dated 28th January, 2004 of a Division Bench of this Court (Coram: R.M.Lodha and Anoop V. Mohta, JJ) in Appeal No.971 of 2003 (The Collector of Mumbai & Anr. Vs. Jyoti Pratab Lalwani & Anr.). She submitted that as the view taken in the impugned Judgment is affirmed by a co-ordinate bench of this Court, no interference was called for.

6. Shri Belose, the learned A.G.P. replied to the contentions raised by the learned Counsel for the Respondent on the basis of the aforesaid decision of the Division Bench dated 28th January, 2004. He submitted that it was not brought to the notice of the concerned Division Bench that the present Appeal challenging the impugned order was pending. He pointed out that the Division Bench relied upon the order impugned in the present Appeal as if the order had attained finality. It is apparent that the said Division Bench was not apprised of the fact that the present Appeal was pending. He submitted that the aforesaid decision of the Division Bench relied upon by the learned Counsel for the Respondent cannot be

read as a binding precedent as the same has been rendered in ignorance of the fact that the present Appeal was pending.

7. We have carefully considered the submissions. It is not in dispute that late husband of the Respondent was holding a CL-III licence at the time of his death. This is not a case where Application made by the Respondent for substitution of her name in the licence after demise of her husband was rejected. Infact, the communication dated 17th December, 1999 specifically records that the request of the Respondent has been allowed subject to deposit of privilege fee of Rs.97,000/- with the Government Treasury. Therefore, the issue whether the Respondent had a right to get her name included in the licence in place of her deceased husband does not arise for consideration in the present case. The only issue which is required to be decided is whether the Appellants could have demanded privilege fee as a condition for incorporating the name of the Respondent in the licence.

8. The learned Single Judge has placed reliance on a decision in the case of Appeal No.198 of 1993 (State of Maharashtra & Ors. Vs. Pushpalata) decided

on 17th February, 1994. This was a case where Respondent-Pushpalata was holding a vendor's licence for sale of foreign liquor jointly with her mother. The mother of said Pushpalata expired on 20th August, 1991 and therefore, she applied for deletion of her mother's name from the licence. The Licensing Authority demanded a sum of Rs.20,000/- as fee for deleting the name of Pushpalata's mother. The said demand was challenged by Pushpalata by filing Writ Petition before the learned single Judge of this Court. The said demand was sought to be justified by placing reliance on Rule 5 of the Bombay Prohibition (Privilege Fees) Rules, 1954. The Division Bench approved the decision of the learned single Judge that the demand for privilege fee was illegal. However, the order of refund was set aside.

9. The learned single Judge of this Court in Writ Petition No.2510 of 1994 (Kamala M. Poojary Vs. The Collector of Bombay) had an occasion to decide a similar issue where widow of a holder of FL-III licence applied for transfer of the licence in her name after demise of her husband. A demand for payment of privilege fee was made by the authorities for effecting transfer. The learned single Judge by Judgment and Order dated 15th June, 1999 held that

Rule 5 the said Rules had application only when there was a transfer inter vivos i.e. from one living person to another living person. Therefore, the learned single Judge held that the demand for payment of privilege fee was illegal.

10. It will be necessary to refer to the decision of Division Bench dated 28th January, 2004 in the case of The Collector of Bombay Vs. Jyoti Lalwani & Anr.(supra) which is relied upon by the learned Counsel for the Respondent. In the said case, an Appeal arising out of a decision of the learned single Judge of this Court setting aside a demand for deposit of privilege fee came up for consideration before Division Bench. In paragraph No.3 of the decision, the Division Bench referred to the facts of the case in the impugned order in the present Appeal. In paragraph No.4, the Division Bench considered the view taken by the learned single Judge in the order impugned in the present Appeal. In paragraph No.5 Division Bench referred to decision in the case of Smt Suchitra Vs. State of Maharashtra (supra). In paragraph No.6, Division Bench in the said decision has expressly upheld the view taken by the learned single Judge in the order impugned in this Appeal. In paragraph No.8 Division Bench held thus:

> "The issue before us is whether the demand made by the Collector of Mumbai calling upon the respondents herein to deposit privilege fee was illegal, wholly unjust and contrary to the provisions of the Bombay Prohibition (Privilege Fees) Rules, 1954 and the learned single Judge committed any error in quashing the said demand. The said issue is concluded by the Division Bench judgment of this Court in Smt. Suchitra Yuraj Avhad (supra) decided on 27.01.2003. The learned single Judge cannot be said to have erred in taking the view which is consistent with the view of the Division Bench in Smt. Suchitra Yuvraj Avhad (supra)."

Perusal of the said decision dated 28th January, 2004 shows that the view taken by the learned single Judge in the order impugned before us has been expressly upheld by the Division Bench on the basis of another decision of another Division Bench in the case of Smt Suchitra (supra).

11. View taken by the said two decisions of the Division Bench is that Rule 5 applies to voluntary

transfer from one person to another and cannot be made applicable to the transfer of licence in the name of the legal representative of the deceased licensee. If Rule 5 has no application to transfer in question, it is obvious that privilege fee could not have been demanded from the Respondent. As indicated earlier, the Appellants had allowed the Application for transfer made by the Respondent and the only question before the learned single Judge was whether demand for payment of privilege fee was decided. We find no reason to disagree with a view taken by the Division Bench in the aforesaid decisions.

12. Hence, we pass following order:

(i) The Appeal is dismissed.

(ii) No orders as to costs.

CHIEF JUSTICE

ABHAY S. OKA, J.